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GOOGLE INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ORACLE AMERICA, INC.,

16 Plaintiffs,

17 v.

18 GOOGLE INC.,

19 Defendant.
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Case No. 3:10-cv-03561 WHA

**GOOGLE INC.'S RESPONSE TO
COURT'S FURTHER REQUEST RE: GNU
CLASSPATH**

Dept. Courtroom 8, 19th Fl.
Judge: Hon. William Alsup

As is explained in more detail below, the current wording of the GNU Classpath project's open source license—the GNU General Public License version 2 with the Classpath exception—was first used on January 22, 2002. An earlier version of the Classpath exception with different wording was first used on March 15, 2000. Before March 15, 2000, the GNU Classpath project was licensed under a different open source license, the GNU Library General Public License, version 2, which is another open source license with a “linking” exception.

Google expects that its open source licensing expert, Andrew Hall, and Sun's former Chief Open Source Officer, Simon Phipps, will explain with authority what the Classpath exception to the GNU General Public License version 2 means, and what Sun in particular understood it to mean. Other witnesses may also testify about the Classpath exception and their understanding of it.¹

I. BACKGROUND

GNU Classpath is a project of the Free Software Foundation (“FSF”), a nonprofit with the stated worldwide mission of promoting computer user freedom and defending the rights of free software users.² The GNU Classpath project seeks to “create free core class libraries for use with virtual machines and compilers for the java programming language.”³ The GNU Classpath project views these class libraries as “a set of essential libraries for supporting the Java programming language,”⁴ and states that “GNU Classpath is a free implementation of Java's standard library.”⁵ The expressed goal of the GNU Classpath project is to be fully compatible with the 1.1 and 1.2 releases of Java 2 Standard Edition (“J2SE”), and over 95% compatible with the 1.3, 1.4, 5.0 and 6.0 releases of J2SE.⁶

The project is named after the “CLASSPATH” variable, which “is one way to tell applications [written in the Java programming language], including the JDK tools, where to look

¹ See Google's Proffer Re: GNU and the Custom and Practice Regarding Reimplementations of Java APIs (ECF 1766-1 Apr. 30, 2016).

² <http://www.gnu.org/software/classpath/> & <http://www.fsf.org/about/>.

³ <http://www.gnu.org/software/classpath/>.

⁴ http://www.gnu.org/software/classpath/faq/faq.html#faq1_1.

⁵ http://www.gnu.org/software/classpath/faq/faq.html#faq1_5.

⁶ See <http://www.gnu.org/software/classpath/>.

for user classes.”⁷ The Classpath *exception* is so named because it was written as an exception to the GNU General Public License for use with the GNU Classpath project.⁸ When Sun announced that it would be open sourcing the Java SE API class libraries, it “decided to follow the[] lead” of the “Free software Java technology communities” and to “use the Classpath exception.”⁹ The Java SE API class libraries in OpenJDK thus are also licensed under the GNU General Public License version 2 with the Classpath exception.¹⁰ Oracle continues to license the OpenJDK class libraries under the GNU General Public License version 2 with the Classpath exception.¹¹

The earliest log entries for code commits to the GNU Classpath project code repository date back to May 1998.¹² The most recent numbered release of GNU Classpath, the 0.99 release, is dated March 7, 2012.¹³ The most recent log entries for code commits to the GNU Classpath project’s code repository are from earlier this year.¹⁴

II. WHEN THE GNU CLASSPATH PROJECT FIRST MADE THE JAVA CLASS LIBRARIES AVAILABLE WITH THE CLASSPATH EXCEPTION LICENSE

Earliest version of the GNU Classpath project. The first file to be committed to the GNU Classpath project’s code repository that had any express licensing terms is code for the Authenticator class in the java.net package, which was committed on May 18, 1998, and licensed “under the terms of the GNU Library General Public License as published by the Free Software Foundation, version 2.”¹⁵ The preamble to that license explains the FSF’s view that an executable that is linked with a library “is a combined work, a derivative of the original library, and the

⁷ <https://docs.oracle.com/javase/tutorial/essential/environment/paths.html>.

⁸ See <https://web.archive.org/web/20061116051402/http://www.sun.com/software/opensource/java/faq.jsp> (snapshot from Nov. 16, 2006) (“The Classpath exception was developed by the Free Software Foundation’s GNU/Classpath Project”).

⁹ *Id.*

¹⁰ *Id.* (“GPL v2 + the Classpath exception for the class libraries”).

¹¹ <http://openjdk.java.net/faq/> (“GPL v2 + the Classpath exception for the class libraries”); see also <http://openjdk.java.net/legal/gplv2+ce.html>.

¹² <http://git.savannah.gnu.org/cgiit/classpath.git/log/?ofs=12180>.

¹³ *Id.*

¹⁴ See <http://git.savannah.gnu.org/cgiit/classpath.git/log/>.

¹⁵ <http://git.savannah.gnu.org/cgiit/classpath.git/commit/?id=5385c89ddba5ce50190a863740fe608c60073d03> (May 18, 1998 code commit log entry).

ordinary General Public License treats it as such.”¹⁶ Because the purpose of offering a library is for others to link their executable code with it, “using the ordinary General Public License for libraries did not effectively promote software sharing, because most developers did not use the libraries” and the FSF therefore “concluded that weaker conditions might promote sharing better.”¹⁷ The GNU Library General Public License, version 2, thus includes an exception for certain types of linking, although the precise details are not exactly the same as the later-developed Classpath exception.¹⁸ (The GNU Library General Public License was later renamed the GNU “Lesser” General Public License.¹⁹ Under either name, it is often referred to as the “LGPL.”)

Earliest wording of the Classpath exception. On March 15, 2000, the language specifying the GNU Library General Public License, version 2, was replaced with new language specifying the applicable license as “the GNU General Public License as published by the Free Software Foundation; either version 2, or (at your option) any later version,” with an added exception (italicized below) that is similar to the Classpath exception that is now in place:

GNU Classpath is free software; you can redistribute it and/or modify it under the terms of the GNU General Public License as published by the Free Software Foundation; either version 2, or (at your option) any later version.

GNU Classpath is distributed in the hope that it will be useful, but WITHOUT ANY WARRANTY; without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. See the GNU General Public License for more details.

You should have received a copy of the GNU General Public License along with GNU Classpath; see the file COPYING. If not, write to the Free Software Foundation, Inc., 59 Temple Place, Suite 330, Boston, MA 02111-1307 USA.

As a special exception, if you link this library with other files to produce an executable, this library does not by itself cause the resulting executable to be covered by the GNU General Public License. This exception does not however

¹⁶ <http://www.gnu.org/licenses/lgpl-2.0.en.html>.

¹⁷ *Id.*

¹⁸ *See id.* § 6 (“As an exception to the Sections above, you may also compile or link a ‘work that uses the Library’ with the Library to produce a work containing portions of the Library, and distribute that work under terms of your choice, provided that the terms permit modification of the work for the customer’s own use and reverse engineering for debugging such modifications.”)

¹⁹ *See* <http://www.gnu.org/licenses/lgpl-3.0.en.html>.

1 *invalidate any other reasons why the executable file might be covered by the GNU*
 2 *General Public License.*²⁰

3 The GNU Classpath project website was updated sometime between December 2, 2000, and April
 4 1, 2001, to reflect this licensing change.²¹

5 **Current wording of the Classpath exception.** On January 22, 2002, in a code commit
 6 with a log entry that notes that the commit was made to “[a]dd License clarification,” the
 7 Classpath exception was reworded to its current form:

8 Linking this library statically or dynamically with other modules is making a
 9 combined work based on this library. Thus, the terms and conditions of the GNU
 10 General Public License cover the whole combination.

11 As a special exception, the copyright holders of this library give you permission to
 12 link this library with independent modules to produce an executable, regardless of
 13 the license terms of these independent modules, and to copy and distribute the
 14 resulting executable under terms of your choice, provided that you also meet, for
 15 each linked independent module, the terms and conditions of the license of that
 16 module. An independent module is a module which is not derived from or based
 17 on this library. If you modify this library, you may extend this exception to your
 18 version of the library, but you are not obligated to do so. If you do not wish to do
 19 so, delete this exception statement from your version.²²

20 Sometime between February 1 and August 1, 2002, the GNU Classpath project website was
 21 updated to reflect the clarified language, but the web page quoted only the second paragraph of
 22 the Classpath exception.²³ The web page also explained that GNU Classpath “can be used to run
 23 free as well as proprietary applications and applets. Using GNU Classpath as the class library for
 24 a Java virtual machine (JVM) does not affect the licensing of the JVM.”²⁴

25 ²⁰ <http://git.savannah.gnu.org/cgiit/classpath.git/commit/?id=c500d69095708034ee2bfb0075148bd5c1a0aad> (emphasis added). In the cited “commit” entry, lines of text preceded by a “-”
 26 indicate lines that were deleted, while lines of text preceded by a “+” indicate lines that were
 27 added.

28 ²¹ Compare <https://web.archive.org/web/20010401030245/http://www.gnu.org/software/classpath/classpath.html> (snapshot from April 1, 2001) with <https://web.archive.org/web/20001202170600/http://www.gnu.org/software/classpath/classpath.html> (snapshot from Dec. 2, 2000).

²² See <http://git.savannah.gnu.org/cgiit/classpath.git/commit/?id=21ce2e275ce2e3dfc41878ea34feda01f2597743> (Jan. 22, 2002 code commit log entry).

²³ Compare <https://web.archive.org/web/20020811022313/http://www.gnu.org/software/classpath/classpath.html> (snapshot from Aug. 11, 2002) with <https://web.archive.org/web/20020201204833/http://www.gnu.org/software/classpath/classpath.html> (snapshot from Feb. 2, 2002).

²⁴ <https://web.archive.org/web/20020811022313/http://www.gnu.org/software/classpath/classpath.html> (snapshot from Aug. 11, 2002).

By October 1, 2003, the website had been updated again, this time adding the paragraph that begins with “Linking this library . . .” to the website,²⁵ and changing the explanation that followed to say:

As such, it can be used to run, create and distribute a large class of applications and applets. When GNU Classpath is used unmodified as the core class library for a virtual machine, compiler for the java language [sic], or for a program written in the java programming language it does not affect the licensing for distributing those programs directly.²⁶

Finally, on November 27, 2003, the website was updated again, moving the Classpath exception to a separate webpage,²⁷ with the same language and URL that is used today.²⁸ OpenJDK uses the exact same wording of the Classpath exception for its class libraries.²⁹

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²⁵ <https://web.archive.org/web/20031001224128/http://www.gnu.org/software/classpath/classpath.html> (snapshot from Oct. 1, 2003).

²⁶ *Id.*

²⁷ <http://cvs.savannah.gnu.org/viewvc/classpath/classpath/doc/www.gnu.org/license.wml?hideattic=1&revision=1.1&view=markup> (Nov. 27, 2003 HTML website code commit log entry); <https://web.archive.org/web/20031204151232/http://www.gnu.org/software/classpath/license.html> (snapshot from Dec. 4, 2003).

²⁸ <http://www.gnu.org/software/classpath/license.html>.

²⁹ <http://openjdk.java.net/legal/gplv2+ce.html>.